



Information Technology Liability Insurance Policy

Solution Underwriting Agency Pty Ltd

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ABN 68 139 214 323 AFSL 407780

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Important Information

This Policy is a legal contract between You and Us. You have paid, or agreed to pay, Us the Premium and We provide the cover specified in this Policy and as set out in Your Schedule.

The terms, conditions and provisions of the insurance We offer You are set out in this Policy. It is important that You:

- read all of the Policy before You buy it to make sure that it gives You the protection You need;
- are aware of the limits on the cover provided and the amounts We will pay You (including any Excess that applies);
- are aware of the definitions in Your Policy. You will find definitions throughout Your Policy.

You must comply with all provisions of this Policy, otherwise We may be entitled to refuse to pay a claim or reduce the amount You are entitled to receive.

The Policy is in force for the Period of Insurance set out in Your Schedule or until cancelled.

For the limits on the cover provided:

- some of these will be stated in the Policy itself (these are Our standard policy limits); and
- the remainder will be stated in Your Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If Your Policy is endorsed You will receive notification of the endorsement.

In issuing this Policy to You, We have relied upon the proposal form You have already completed.

Receiving Your Policy documents

You may choose to receive Your Policy documents:

- electronically, including but not limited to, email; or
- by post.

If You tell Solution to send Your Policy documents electronically then they will send them to the email address that You have provided. This will continue until You tell Solution otherwise or until Solution advises that this method is no longer suitable. Each electronic communication will be deemed to be received by You 24 hours after it leaves Solution's information system. If You do not tell Solution to send Your Policy documents electronically then the Policy documents will be sent to the mailing address that You have provided.

You are responsible for ensuring that the email and mailing address that Solution has is up to date. Please contact Solution to change Your email or mailing address.

Updates to Your Policy

From time to time and where permitted by law, We may change parts of the Policy. We will issue You with an Endorsement or other document to update the relevant information except in limited cases. Any updates which are not materially adverse to You from the view of a reasonable person deciding whether to buy this insurance, may be found on Solution's website at solutionunderwriting.com.au.

You can obtain a paper copy of updated information without charge by calling Solution or Your intermediary.

Cooling-off period

If You are not satisfied with the cover provided by this Policy, You may cancel it within 14 days of receiving it, and obtain a full refund less any non-refundable government charges and taxes that We have paid. You may notify Us in writing or electronically.

If You make a claim for any incident within the 14 day period, You must pay Your annual premium in full.

If Your Policy is for an event that will finish within the 14 day cooling off period, You can only exercise Your right to cancel before the event starts.

About the Insurer

This insurance is underwritten by Chubb Insurance Australia Limited (ABN 23 001 642 020, AFSL 239687) ('Chubb'). Chubb is regulated by the Australian Prudential Regulation Authority ('APRA'). If You require further information about this insurance or wish to confirm a transaction, please contact Solution.

Chubb's contact details are:

Grosvenor Place
Level 38, 225 George Street
Sydney NSW 2000
O +61 2 9335 3200
F +61 2 9335 3411
www.chubb.com/au

About the agent

Solution Underwriting Agency Pty Ltd (ABN 68 139 214 323, AFSL 407780) (Solution) arranges policies for and on behalf of Chubb.

Solution acts under a binding authority given to it by the insurer to administer, arrange, enter into, vary, renew and/or cancel policies. In all aspects of arranging this Policy, Solution acts as an agent for the insurer and not for You.

If You have any queries in relation to Your Policy, You can contact Solution in any of the following ways:

Postal Address: Level 5, 289 Flinders Lane, Melbourne, VIC 3000 Australia

Telephone: 03 9654 6100

Email: solution@solutionunderwriting.com.au

Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

What you do not need to tell us

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Privacy Statement

Chubb Insurance Australia Limited (Chubb) is committed to protecting your privacy. This document provides you with an overview of how we handle your personal information. Our Privacy Policy can be accessed on our website at www.chubb.com/au.

Personal Information Handling Practices

Collection, Use and Disclosure

We collect your personal information (which may include sensitive information) when you are applying for, changing or renewing an insurance policy with us or when we are processing a claim in order to help us properly administrate your insurance proposal, policy or claim.

Personal information may be obtained by us directly from you or via a third party such as your insurance intermediary or employer (e.g. in the case of a group insurance policy).

When information is provided to us via a third party we use that information on the basis that you have consented or would reasonably expect us to collect your personal information in this way and we take reasonable steps to ensure that you have been made aware of how we handle your personal information.

The primary purpose for our collection and use of your personal information is to enable us to provide insurance services to you. Sometimes, we may use your personal information for our marketing campaigns, in relation to new products, services or information that may be of interest to you.

We may disclose the information we collect to third parties, including service providers engaged by us to carry out certain business activities on our behalf (such as assessors and call centres in Australia). In some circumstances, in order to provide our services to you, we may need to transfer personal information to other entities within the Chubb Group of companies (such as the regional head offices of Chubb located in Singapore, UK or USA), or third parties with whom we or those other Chubb Group entities have sub-contracted to provide a specific service for us, which may be located outside of Australia (such as in the Philippines or USA). Please note that no personal information is disclosed by us to any overseas entity for marketing purposes.

In all instances where personal information may be disclosed overseas, in addition to any local data privacy laws, we have measures in place to ensure that those parties hold and use that information in accordance with the consent you have provided and in accordance with our obligations to you under the Privacy Act 1988 (Cth).

Your Choices

In dealing with us, you agree to us using and disclosing your personal information as set out in this statement and our Privacy Policy. This consent remains valid unless you alter or revoke it by giving written notice to our Privacy Officer. However, should you choose to withdraw your consent it

is important for you to understand that this may mean we may not be able to provide you or your organisation with insurance or to respond to any claim.

How to Contact Us

If you would like a copy of your personal information, or to correct or update it, please contact our customer relations team on 1800 815 675 or email CustomerService.AUNZ@chubb.com.

If you have a complaint or would like more information about how we manage your personal information, please review our Privacy Policy for more details or contact the Privacy Officer, Chubb Insurance Australia Limited, GPO Box 4907, Sydney NSW 2001, Tel: +61 2 9335 3200 or email Privacy.AU@chubb.com.

Taxation Information

The amount of cover available under this Policy excludes Goods and Services Tax (GST).

If You are not registered for GST, in the event of a claim We will reimburse You the GST component in addition to the amount that We pay.

The amount that We are liable to pay under this Policy will be reduced by the amount of any input tax credit that You are or may be entitled to claim for the supply of goods or services covered by that payment.

If You are entitled to an input tax credit for the Premium You must inform Us of the extent of that entitlement at or before the time You make a claim under this Policy. We will not indemnify You for any GST liability, fines or penalties that arise from or are attributable to Your failure to notify Us of Your entitlement (or correct entitlement) to an input tax credit on the Premium.

If You are liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that You are or may be entitled to claim on payment of the Excess.

If You are unsure about the taxation implications of this Policy, You should seek advice from Your accountant or tax professional.

Notice to the Insured

Part 1 this Policy is issued on a 'claims made and notified' basis. This means that, subject to the Continuous Cover clause, Part 1 of the Policy responds to claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance. Provided, that You were not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in Your position on notice that a claim may be made against You.

Where You give notice in writing to Us of any facts that might give rise to a claim against You as soon as You become aware of those facts but before the expiry of the Period of Insurance, You may have rights under Section 40(3) of the Insurance Contracts Act 1984 (Cth) to be indemnified in respect of any claim subsequently made against You arising from those facts, notwithstanding that the claim is made after the expiry of the Period of Insurance. Any such rights arise under the legislation only.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice (the Code). The objectives of the Code are to further raise standards of service and promote consumer confidence in the general insurance industry. Further information about the Code and your rights under it is available at www.codeofpractice.com.au and on request.

Financial Claims Scheme

We are an insurance company authorised under the *Insurance Act 1973* (Cth) (Insurance Act) to carry on general insurance business in Australia by the Australian Prudential Regulation Authority (APRA) and are subject to the prudential requirements of the Insurance Act.

The Insurance Act is designed to ensure that, under all reasonable circumstances, financial promises made by Us are met within a stable, efficient and competitive financial system.

Because of this We are exempted from the requirement to meet the compensation arrangements Australian financial services licensees must have in place to compensate retail clients for loss or damage suffered because of breaches by the licensee or its representatives of Chapter 7 of the *Corporations Act 2001* (Cth). We have compensation arrangements in place that are in accordance with the Insurance Act.

In the unlikely event that We were to become insolvent and were unable to meet Our obligations under the Policy, a person entitled to claim may be entitled to payment under the Financial Claims Scheme. Access to the Scheme is subject to eligibility criteria. Please refer to <https://www.fcs.gov.au> for more information

Non-renewable policy

This Policy will terminate at the end of the Period of Insurance specified in the Schedule.

If the Insured wants to obtain similar insurance for a subsequent Period of Insurance, the Insured will need to complete a new Proposal form before the end of the Period of Insurance specified in the Schedule.

Complaints and Dispute Resolution

We take the concerns of our customers very seriously and have detailed complaint handling and internal dispute resolution procedures that you can access. Please note that if we have resolved your initial complaint to your satisfaction by the end of the 5th business day after we have received it, and you have not requested that we provide you a response in writing, the following complaint handling and internal dispute resolution process does not apply. This exemption to the complaints process does not apply to complaints regarding a declined claim, the value of a claim, or about financial hardship.

Stage 1 – Complaint Handling Procedure

If you are dissatisfied with any aspect of your relationship with Chubb including our products or services and wish to make a complaint, please contact us at:

The Complaints Officer

Chubb Insurance Australia Limited
GPO Box 4065
Sydney NSW 2001
O 1800 815 675
E Complaints.AU@chubb.com

The members of our complaint handling team are trained to handle complaints fairly and efficiently.

Please provide us with your claim or policy number (if applicable) and as much information as you can about the reason for your complaint.

We will investigate your complaint and keep you informed of the progress of our investigation. We will respond to your complaint in writing within fifteen (15) business days provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames and, if we cannot agree, you may request that your complaint is taken to Stage 2 and referred to Our internal dispute resolution team. We will otherwise keep you informed about the progress of our response at least every ten (10) business days, unless you agree otherwise.

Please note if your complaint relates to Wholesale Insurance (as defined in the General Insurance Code of Practice), we may elect to refer it straight to Stage 2 for review by our Internal Dispute Resolution team.

Stage 2 – Internal Dispute Resolution Procedure

If you advise us that you wish to take your complaint to Stage 2, your complaint will be reviewed by members of our internal dispute resolution team, who are independent to our complaint handling team and are committed to reviewing disputes objectively, fairly and efficiently.

You may contact our internal dispute resolution team by phone, fax or post (as below), or email at:

Internal Dispute Resolution Service

Chubb Insurance Australia Limited
GPO Box 4065
Sydney NSW 2001
O +61 2 9335 3200
F +61 2 9335 3411
E DisputeResolution.AU@chubb.com

Please provide us with your claim or policy number (if applicable) and as much information as you can about the reason for your dispute.

We will keep you informed of the progress of our review of your dispute at least every ten (10) business days and will respond to your dispute in writing within fifteen (15) business days, provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames. If we cannot agree, you may refer your dispute to the Financial Ombudsman Service Australia (FOS) as detailed under Stage 3 below, subject to its Terms of Reference. If your complaint or dispute falls outside the FOS Terms of Reference, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

Stage 3 – External Dispute Resolution

If you are dissatisfied with our internal dispute determination, or we are unable to resolve your complaint or dispute to your satisfaction within forty-five (45) days, you may refer your complaint or dispute to FOS, subject to its Terms of Reference.

FOS is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission. We are a member of this scheme and we agree to be bound by its determinations about a dispute. Where a dispute is covered by the FOS Terms of Reference, the General Insurance Division of FOS offers a free and accessible dispute resolution service to consumers.

You may contact FOS at any time at:

Financial Ombudsman Service Australia
GPO Box 3
Melbourne VIC 3001
O 1800 367 287
F +61 3 9613 6399
E info@fos.org.au
www.fos.org.au

If you would like to refer your dispute to FOS you must do so within 2 years of the date of our internal dispute determination. FOS may still consider a dispute lodged after this time if FOS considers that exceptional circumstances apply.

General Provisions – General Definitions

General Definitions

The following definitions apply to all Parts of the Policy. Certain definitions which are only used in a specific Part are also contained in that Part. Where headings are used in this Policy, they are only for the purpose of description and are not intended to be used for interpretative purposes.

Act of Terrorism

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

Aircraft

Any vessel, craft, device or thing designed to fly in or through the atmosphere or space including any vessel, craft, device or thing made or intended to be propelled on a cushion of air over the surface of land or water.

Business

The business, trade or profession specified in the Schedule including:

- a) the provision and management of canteen, social, sports, welfare and child care facilities by the Insured for the Insured's employees' benefit; and
- b) the Insured's ownership or occupation of the Insured's premises.

Claim

Any:

- a) written demand for compensation or damages or other relief; or
- b) civil proceeding seeking compensation or damages or other relief; or
- c) criminal charge brought against the Insured; or
- d) notice of charge, formal investigation order or notice requiring the Insured to attend an inquiry or other proceedings ordered by an inquiry body.

Defence Costs

Reasonable legal costs and other expenses incurred by or on behalf of the Insured (with the written consent of the Insurer) or by the Insurer to investigate, defend and/or settle a Claim.

Electronic Data

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronics and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

Employee

Any person:

- a) employed under a contract of service by the Insured and remunerated or otherwise compensated for this service; or
- b) who entered into a contract with the Insured and obtains at least 90% of his or her income from the Insured during the Period of Insurance; provided that at the time of the act, error or omission giving rise to the Claim, the person was under the Insured's direct control and supervision in the conduct of the Business.

Employee does not include a director, principal, partner, sole practitioner or agent of the Insured.

Excess

The amount payable by the Insured to the Insurer towards the cost of any Claim under this Policy, excluding costs and expenses incurred by the Insured in the investigation, settlement or defence of any Claim or Occurrence.

Hovercraft

Any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

Information Technology Services

- a) Any work, service, specification or advice provided by the Insured in the conduct of the Business, including the provision of data processing, data communication services, data warehousing, telecommunications and computer facilities management; and
- b) Any Computer Equipment manufactured, produced, assembled, constructed, erected, installed, repaired, serviced, treated, sold, licensed, shared, supplied, re-supplied or distributed by the or on the Insured's behalf in relation to or in connection with the activities of the Insured described in paragraph a) of this definition.

Insured, You, Your

- a) Each person, company or other entity specified in the Schedule as being insured under this Policy as well as all Subsidiary companies incorporated within the Territorial Limit and notified to the Insurer, existing before the inception date of this Policy and declared in the Proposal; or
- b) An Employee or officer of each person, company or other entity referred to in a) above; or
- c) For the purposes of Part B of this Policy only, an office bearer or member of a canteen, social, sports, welfare, first aid or child care facility provided by the Insured Business for employees' benefit and voluntary worker.

Insurer, We, Us, Our

Chubb Insurance Australia Limited (ABN 23 001 642 020, AFSL 239 687) ('Chubb').

Limit of Indemnity

The amount shown in the Schedule against 'Limit of Indemnity' which is the total liability of the Insurer under the Policy for all Claims in the Period of Insurance.

Period of Insurance

The period shown in the Schedule against 'Period of Insurance' unless the Policy is cancelled earlier.

Personal Injury

- a) bodily injury, sickness or disease, including death, shock, fright, mental anguish, mental injury or disability; or
- b) unlawful arrest, wrongful detention or false imprisonment; or
- c) wrongful entry or eviction or other invasion of privacy; or
- d) a publication of a libel or utterance of a slander or other defamatory material; or

- e) intentional act, by the Insured or at the Insured's direction, resulting in Personal Injury but only if such Personal Injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

Policy

This Policy document, its Schedule and the endorsements, if any, noted in the Schedule or granted by the Insurer after the start of the Policy, and the information given to the Insurer on behalf of the Insured in the Proposal.

Pollutant

Any:

- a) solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b) waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c) other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

Premium

The amount payable by the Insured for the insurance provided by the Insurer under this Policy including all applicable taxes, duties and imposts.

Proposal

The written proposal form and all supplementary information and material provided by or on behalf of the Insured.

Schedule

The certificate issued by the Insurer which forms part of this Policy and shows the Insured's policy number, the Premium, the insurance cover selected by the Insured and any special terms and conditions or endorsements.

Subsidiary

Any entity:

- a) which is deemed to be a subsidiary of the Insured entity named in the Schedule at the start of the Period of Insurance by Australian law provided the accounts of any Subsidiary are incorporated into the accounts of the Insured entity named in the Schedule in accordance with the relevant accounting standard; or
- b) in which the Insured entity named in the Schedule controls more than 50% of the issued share capital or has more than one half of the maximum voting rights for any vote at a general meeting of the body corporate or entity.

Territorial Limit

Anywhere in the world other than the United States of America or Canada or their territories, protectorates or dependencies.

Vehicle

Any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power and any trailer or other attachment designed to be drawn by any such machine.

Watercraft

Any vessel, craft, device or thing designed to float on or in water or to travel on or through or under water other than model boats.

General Provisions – General Conditions

The following conditions apply to all Parts of the Policy:

1. Cancellation

This Policy may be cancelled by:

- a) the Insured at any time notifying the Insurer in writing, in which case:
 - i. cancellation takes place when the Insurer receives the notice; and
 - ii. the Insurer will retain, or be entitled to, Premium for the period during which this Policy has been in force based on the Insurer's normal short period rates together with any administration expenses and non-refundable taxes and duties.
- b) the Insurer on any grounds set out in the Insurance Contracts Act 1984, as amended from time to time, by giving the Insured notice in writing, in which case the Insurer will refund the Premium paid for the unexpired part of the Period of Insurance (less non-refundable taxes and duties).

The Insured must supply the Insurer with such particulars as the Insurer may require for the adjustment of the Premium following any cancellation. There will be no pro-rata refund if there has been any written notification of a Claim, Occurrence or matter covered by this Policy.

2. Claims Co-operation and Mitigation

The Insured must not make any offer or payment or admit liability for or settle any Claim or Occurrence or incur any costs or expenses or assume any liability in connection with a Claim or Occurrence without the written consent of the Insurer. The Insured must not forego, waive, exclude or limit any rights of recovery. The Insured must at its own cost, take all reasonably practicable steps to avoid or minimise any liability.

The Insurer will not be liable for any settlement or other liability assumed, or costs and expenses incurred by the Insured without the written consent of the Insurer.

The Insured at its own expense will immediately provide to the Insurer any assistance and information the Insurer reasonably requires to allow the Insurer to determine whether or not the Insured is entitled to indemnity under this Policy, and to enable the Insurer to investigate and defend any Claim or Occurrence.

3. Claims Procedures

In circumstances that give rise to or may give rise to a Claim or Occurrence under this Policy:

- a) the Insured must notify the Insurer as soon as possible of all such circumstances and provide all reasonable information and assistance that the Insurer may require, including details of any other insurance or indemnity to which the Insured may be entitled in relation to the circumstance;

- b) the Insured must not admit liability or settle or attempt to settle any Claim or Occurrence without the Insurer's written consent; and
- c) the Insurer may take over and conduct, in the Insured's name, the defence or settlement of any Claim or Occurrence and the Insurer will have full discretion in the conduct of any proceedings in connection with a Claim or Occurrence.

4. Claims Reporting

The Insured must notify the Insurer as soon as possible of all such circumstances and provide all reasonable information and assistance that the Insurer may require, including details of any other insurance or indemnity to which the Insured may be entitled to.

5. Discharge of Liability

If the Insurer is of the opinion that the amount required to resolve any Claim or Occurrence may exceed the available Limit of Indemnity, the Insurer is entitled to discharge its liability by electing to pay (or agreeing to pay upon settlement of the Claim or Occurrence) the available Limit of Indemnity to the Insured or on the Insured's behalf (including the Defence Costs incurred up to the time it makes this election).

If the Insurer is conducting the defence of the Claim or Occurrence at the time it makes this election, the Insurer will stop conducting the defence. The Insurer will have no further liability for Defence Costs or other costs after written notice of the election has been given to the Insured.

If the Insured disagrees with a Claim or Occurrence settlement recommended by the Insurer, the Insured may elect to contest a Claim or Occurrence. However, the liability of the Insurer in respect of the Claim will not exceed the amount for which the Claim or Occurrence could have been settled plus the Defence Costs or other costs incurred up to the date of this election, less the Excess.

6. Governing Law

This Policy is governed by the laws of Australia and the State or Territory where the Policy was issued. The courts of the place where the Policy was issued will have non-exclusive jurisdiction in any dispute in relation to this Policy.

7. GST Basis of Settlement

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the premium, the Insured must inform the Insurer of the extent of that entitlement when the Insured makes a claim under this Policy. The Insurer will not indemnify the Insured for any GST liability, fines or penalties arising from or due to the Insured's failure to notify the Insurer of the Insured's entitlement (or correct entitlement) to an input tax credit on the premium.

If the Insured is liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insured is or may be entitled to claim on payment of the Excess.

8. Interpretation

The paragraph headings are for convenience and do not form part of this Policy for the purposes of interpretation of this Policy. Words and expressions in the singular include the plural and vice versa.

Words (except headings) in bold lettering have a special meaning and are defined in the Policy. Words that are not specifically defined in this Policy have their normal meaning.

9. Other Insurance

If for any Claim or Defence Costs or Occurrence there is any other insurance or indemnity which may provide indemnity to the Insured or a right of contribution by the Insurer, the Insured will notify the Insurer and provide full details of that other insurance or indemnity and any further information the Insurer may reasonably require.

10. Validity

This Policy is not valid unless its Schedule is attached and has been signed by an authorised officer or agent of the Insurer.

11. Severability

The Insurer agrees that any conduct of any party who is an Insured, where that party breached the duty of disclosure or made a misrepresentation to the Insurer before this contract was entered into, will not prejudice the right of any other party who is an Insured to indemnity under the Policy. Provided that the other Insured:

- a) is innocent of and has no prior knowledge of this conduct; and
- b) immediately upon becoming aware of any of this conduct advises the Insurer in writing of all known facts in relation to this conduct.

This condition does not relieve any Insured from the duty of disclosure owed to the Insurer.

12. No assignment

The Insured must not assign the Policy or its rights under this Policy without the Insurer's prior written consent.

13. Subrogation

If the Insurer makes a payment under this Policy to the Insured or on the Insured's behalf then, subject to the Insurance Contracts Act 1984 as amended from time to time, the Insurer will be subrogated to all of the Insured's rights of recovery against all persons and the Insured must, at the Insurer's request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist the Insurer in the exercise of its rights.

14. Material Changes to the Risk

The Insured will immediately advise the Insurer of any material alteration to the Insured's professional Business including but not limited to:

- a) any change in the nature of the services comprising the Business; or
- b) any merger with or acquisition by the Insured of, or acquisition of the Insured by, any other business; or
- c) an Insured going into bankruptcy, administration, receivership or liquidation; or
- d) an Insured entering into a debt agreement or arrangement with creditors; or
- e) the cancellation or suspension of, or the imposing of special conditions upon, the Insured's statutory professional registration or licensing or registration with a professional association.

General Provisions – General Exclusions

General Exclusions

The following exclusions apply to all Parts of the Policy. The insurance does not apply to, and the Insurer will not indemnify the Insured for any actual or alleged liability directly or indirectly arising from, caused by, attributed to, or in any way related to:

1. Aircraft Watercraft and Hovercraft

- a) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by the Insured or on the Insured's behalf of any Aircraft, Watercraft and Hovercraft; or
- b) the use of the Insured's Product and/or Information Technology Services with the Insured's knowledge in the construction, operation, maintenance, servicing or repair of any Aircraft, Watercraft and Hovercraft.

2. Asbestos

asbestos, asbestos fibres or any derivatives of asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

3. Avionics Technology

computer hardware or software or Documents in any Aircraft, Aircraft parts, Aircraft maintenance equipment or spacecraft or aerial devices including hardware, software or Documents used for air traffic control or for regulating flight paths.

4. Contractual Liability

any duty, obligation or liability assumed by the Insured by contract, warranty, guarantee or indemnity, unless the duty, obligation or liability would have existed if the Insured had not assumed it.

5. Employer's Liability

- a) Personal Injury to any person employed by the Insured or deemed by law to be employed by the Insured; or
- b) matters imposed or implied by or under:
 - i. any workers compensation act or any other similar law, act or ordinance relating to com-

pensation for injury to any person employed by the Insured or deemed by law to be employed by the Insured; or

- ii. any industrial award, agreement or determination or any contract of employment or workplace agreement, to the extent that the Insured would not have been liable in the absence of that award, agreement, determination or contract; or
 - iii. any law relating to wrongful or unfair dismissal, denial of natural justice, defamation, false or misleading conduct or advertising, misrepresentation, harassment or discrimination in respect of employment by the Insured.
- c) a breach of any obligation owed by an Insured to an Employee.

6. Fines Penalties and Taxes

any exemplary, aggravated, punitive or liquidated damages, any fines, penalties, tax or duty.

7. Fraudulent, Dishonesty and Intentional Conduct

- a) dishonest, fraudulent, criminal or malicious conduct of the Insured; or
- b) wilful breach of statute by the Insured; or
- c) conduct intended to cause Personal Injury or Property Damage (or conduct with reckless disregard for Personal Injury or Property Damage) by the Insured or anyone acting on the Insured's behalf or with the Insured's knowledge or connivance.

8. Known Defects and Recalls

- a) Information Technology Services if the Insured is aware that the service or goods are defective, ineffective or unfit for the purpose for which they were provided; or
- b) for the cost of recall, withdrawal, re-performance, replacement, repair, modification or inspection of Information Technology Services or any part of these services if they are withdrawn from use or sale due to known or suspected defect/s or deficiencies.

9. Nuclear Risks, War and Terrorism

- a) ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- b) war, invasion, acts of foreign enemies or hostilities (whether war be declared or not), civil or military uprising, or usurped power, insurrection, revolution, rebellion, or confiscation or requisition or nationalisation or destruction of or damage to property by or under the order of any local government or public or local authority; or
- c) any:
 - i. Act of Terrorism; or
 - ii. action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence.

10. Pollution

- a) Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water; or
- b) the costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or testing and monitoring for, containing, removing, nullifying, or cleaning up of, Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than in the United States of America or Canada or their protectorates, dependencies or territories, this exclusion shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from the Insured's standpoint which takes place in its entirety at a specific time and place.

11. Prohibited by Law

to the extent that the provision of such indemnity or benefit would expose the Insurer or their parent to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanction, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

12. Territorial and Jurisdictional

- a) the application of laws of the United States of America or Canada or their protectorates, dependencies or territories; or
- b) any act, error or omission occurring in the United States of America or Canada or their protectorates, dependencies or territories; or
- c) any matters brought in a court within the Territorial Limit to enforce a judgment handed down in a court in the United States of America or Canada or their protectorates, dependencies or territories.

Part 1: Professional Indemnity

1. Insuring Clauses for Part 1

1.1 Cover

Where cover under this Part is indicated in the Schedule, the Insurer agrees to indemnify the Insured for civil liability covered by this Policy arising from any Claim which is:

- a) first made against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance: and
- b) for breach of professional duty in the conduct of the Information Technology Services.

1.2 Retroactive Date

If a Retroactive Date is specified in the Schedule, indemnity is only available in respect of acts, errors or omissions committed after the Retroactive Date.

1.3 Limit of Indemnity

The total liability of the Insurer under this Policy in respect of any one Claim, and in the aggregate for all Claims, (including any amounts paid or which have been agreed will be paid in accordance with Claims Condition - Discharge of Liability) will not exceed the Limit of Indemnity.

If a limit is shown in the Schedule for a particular Cover or Extension then the total liability of the Insurer under that Cover or Extension is as stated inclusive of Defence Costs and the limit is part of and not in addition to the Limit of Indemnity. The Extension – Automatic Reinstatement will not apply to any Covers or Extensions if the limit is less than the Limit of Indemnity.

1.4 Defence Costs

The Insurer will pay Defence Costs in the investigation, defence and/or settlement of any Claim for which the Insured is entitled to indemnity. Defence Costs are part of the Limit of Indemnity, however the Insurer will indemnify the Insured for Defence Costs in addition to the Limit of Indemnity for up to:

- a) \$5,000,000; or
 - b) the Limit of Indemnity;
- whichever is lesser.

Provided that if a judgment or an amount required to settle a Claim exceeds the Limit of Indemnity, the Insurer's liability to pay Defence Costs is limited to the proportion the Limit of Indemnity bears to the amount required to be paid to dispose of the Claim and in all cases will not exceed the amount equivalent to the additional Defence Costs described in above.

2. Automatic Extensions for Part 1

The Insurer agrees to extend the Insuring Clauses for Part 1 to cover these Automatic Extensions for no additional premium provided that:

- a) each Automatic Extension is subject to the Schedule, General Exclusions and Additional Exclusions for Part 1, General Conditions and Additional Conditions for Part 1, Excess and all other terms applicable to Part 1 of this Policy; and
- b) the inclusion of any Additional Extension does not increase the Limit of Indemnity for Part 1.

2.1 Automatic Reinstatement

If the Limit of Indemnity set out in the Schedule is exhausted or partially exhausted by indemnity provided to the Insured in respect of Claims, the Insurer agrees to reinstate the Limit of Indemnity by the amount by which it is exhausted provided that:

- a) the reinstatement will not apply to Claims made prior to the effective date of the reinstatement; and
- b) the aggregate of the amounts reinstated during the Period of Insurance will be limited to an amount equal to the Limit of Indemnity applicable at the start of the Period of Insurance; and
- c) the Limit of Indemnity reinstated will represent the total liability of the Insurer for all Claims made during the time from the effective date of the reinstatement until the expiry of the Period of Insurance; and
- d) if the Insured Person has insurance that operates in excess of this Policy, no reinstatement will apply until the amounts payable under that insurance are exhausted; and
- e) there will be no reinstatement of sub-limits, except if the original Limit of Indemnity is reinstated.

If the Limit of Indemnity is reinstated on one (1) occasion in accordance with this Extension, the Insurer agrees to reinstate the Limit of Indemnity on one (1) further occasion in accordance with the terms of this section during the Period of Insurance if required.

2.2 Competition and Consumer Act Cover

The Insurer will pay for conduct of the Information Technology Services which is in breach of the *Competition and Consumer Act 2010* (Cth) or corresponding provisions in Commonwealth of Australia and Australian State or Territory fair

trading legislation, but not for intentional acts or criminal liability.

2.3 Consultants, Sub-Contractors and Agents

The Insurer agrees to provide cover for any civil liability arising from, attributable to or reasonably incidental to the provision of Information Technology Services by any consultants, sub-contractors or agents of the Insured.

No indemnity is provided to the consultants, sub-contractors or agents for any Claim made against such consultants, sub-contractors or agents.

2.4 Continuous Cover

If the Insured:

- a) first became aware of facts or circumstances that might give rise to a Claim, in the period 12 months prior to the Period of Insurance; and
- b) had not notified the Insurer of these facts or circumstances prior to the Period of Insurance, then the Exclusion - Prior Circumstances and Claims will not apply to any notification during the Period of Insurance of any Claim later resulting from such facts or circumstances, provided that:
 - i. there has been no fraudulent non-compliance with the Insured's duty of disclosure and no fraudulent misrepresentation by the Insured in respect of these facts or circumstances; and
 - ii. the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under a Professional Indemnity insurance policy issued by the Insurer (or previous insurer to underwrite this policy) which would have provided cover for that Claim and were insured by the Insurer (or previous insurer to underwrite this policy) at the time when the Insured first became aware of the facts or circumstances giving rise to the Claim; and
 - iii. the Insurer can reduce its liability under the Policy to the extent of any prejudice it may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance; and
 - iv. this extension does not apply to any indemnity provided by the Automatic Extension 2.1, "Automatic Reinstatement".

2.5 Dishonesty

The Insurer agrees that, subject to this Automatic Extension and the remaining terms of the Policy, the Fraudulent, Dishonesty and Intentional Conduct General Exclusion will not apply to any Claim arising from or attributable to any dishonest, fraudulent, criminal or malicious act,

error or omission of any Employee in provision of Information Technology Services.

Provided that no indemnity is available by virtue of this Automatic Extension:

- a) where the Insured has knowingly engaged in or condoned such conduct; or
- b) for any person committing or condoning the act, error or omission; or
- c) for any loss sustained or liability incurred as a result of any act, error or omission occurring after the date on which the Insured first discovers, or has reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any such person.

2.6 Estates

The Insurer agrees to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent Insured.

2.7 Former Employees

The Insurer agrees to indemnify the Insured for any Claim made against the Insured arising from former Employee of the Insured in respect of civil liability covered by the Insuring Clauses in the provision of Information Technology Services while acting as an Employee of the Insured.

2.8 Incoming Principals

The Insurer agrees to indemnify any sole practitioner, partner or a director of the Insured for civil liability arising while they were acting in their capacity of sole practitioner, partner or a director in the conduct of a previous business which practised the same type of Information Technology Services as was disclosed in the Proposal.

2.9 Inquiry Representation Expenses

The Insurer agrees to pay the Insured for Inquiry Representation Expenses provided that:

- a) the notice requiring the Insured's attendance at the inquiry or hearing is first received by the Insured and notified to the Insurer during the Period of Insurance; and
- b) the attendance arises directly from conduct allegedly committed by the Insured in the conduct of the Information Technology Services; and
- c) the Insurer agrees in writing to pay the Inquiry Representation Expenses before they are incurred and the Inquiry Representation Expenses are reasonable in the opinion of the Insurer; and
- d) regular or overtime wages, salaries or fees of the Insured are excluded.

The total liability of the Insurer under this Automatic Extension 2.9 will not exceed \$250,000 during the Period of Insurance.

2.10 Intellectual Property Cover

Notwithstanding Exclusion 3.3 'Intellectual Property Infringement', the Insurer will indemnify the Insured in respect of any Claim for civil liability arising from an unintentional infringement of copyright, trademarks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by an Insured in the conduct of the Information Technology Services. The maximum aggregate amount payable by the Insurer under this Automatic Extension in any Period of Insurance is \$500,000 inclusive of Defence Costs which is part of and not in addition to the Limit of Indemnity.

The coverage provided by this extension is always subject to General Exclusion and Territorial and Jurisdictional Exclusions. These exclusions apply to this extension even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this Policy.

2.11 Joint Venture

The Insurer agrees to provide cover for any civil liability of the Insured which is based on or attributable to the Insured's conduct of the Information Technology Services as part of a Joint Venture, where:

- a) the name of the Joint Venture is noted in the Schedule or the fees/income derived from participation in the Joint Venture have been included in the Proposal for the purposes of calculating the premium for this Policy; and
- b) the Joint Venture is not insured by any more specific insurance in respect of the Joint Venture.

There is no cover under this Policy for the Insured's Joint Venture partner.

2.12 Libel and Slander Cover

The Insurer will pay for unintentional libel, unintentional slander or unintentional defamation by the Insured in the conduct of the Information Technology Services.

2.13 Loss of Documents

If the Insured first discovers during the Period of Insurance that any Documents owned by or entrusted to the Insured have been destroyed, damaged, lost or mislaid the Insurer agrees to provide cover for costs and expenses incurred by the Insured to replace or restore these Documents.

Provided that:

- a) the costs and expenses are supported by accounts approved by a competent person nominated by the Insurer; and
- b) the Insurer will not pay for any loss brought about by wear, tear, vermin, mould or mildew or any other gradually operating cause; and

- c) the maximum aggregate amount payable by the Insurer under this Automatic Extension in any Period of Insurance is \$500,000 inclusive of Defence Costs which is part of and not in addition to the Limit of Indemnity.

2.14 Newly Created or Acquired Entity or Subsidiary

If the Insured creates or acquires a Subsidiary or entity which practices the same type of Information Technology Services as the Insured during the Period of Insurance, the Insurer will provide indemnity to the Subsidiary for Claims arising from acts, errors or omissions committed after the time that the entity became a Subsidiary for up to sixty (60) days after it was created or acquired.

Cover will be extended after these sixty (60) days if the Insurer agrees to indemnify the Subsidiary and the Insured agrees to any additional terms or payment of premium that the Insurer requests.

This Extension does not provide any cover after the expiry of the Period of Insurance.

2.15 Past Subsidiary Company

The Insurer will provide indemnity in accordance with the Insuring Clause to those entities which were once a Subsidiary of the Insured but have since ceased to be a Subsidiary. Coverage in this respect shall only apply to Claims for civil liability resulting from Information Technology Services provided or allegedly provided between the date of acquisition or creation of the former Subsidiary by the Insured and the date such Subsidiary ceased to be a Subsidiary.

2.16 Run off cover

The Insurer will provide indemnity to any natural person who is an Insured, if the person retires or otherwise ceases to provide Information Technology Services for Claims arising from acts, errors or omissions committed prior to the date that any such person retires or otherwise ceases to provide Information Technology Services.

This Extension does not provide any cover after the expiry of the Period of Insurance.

3. Exclusions to Part 1

In addition to the General Exclusions, the Insurer will not indemnify the Insured for any actual or alleged liability directly or indirectly arising from, caused by, attributed to, or in any way related to:

3.1 Directors & Officers Liability

the Insured's functions and duties as a director and/or officer of the Insured or any legal entity, corporation or other incorporated body.

3.2 Insolvency

any Claim first made or intimated subsequent to the date upon which the Insured becomes Insolvent. This Exclusion will not apply if the Insured proves that the Claim would have occurred even if the Insured was not Insolvent.

3.3 Intellectual Property Infringement

any Claim directly or indirectly arising from or in connection with plagiarism, infringement or violation of copyright, of trademark, service mark, registered design, license, patent or of any other form of intellectual property whether registered or unregistered.

3.4 Occupier's Liability

the ownership, occupation, control or management of real property by the Insured.

3.5 Personal Injury

any Claim for any Personal Injury.

3.6 Prior Circumstances and Claims

any:

- a) facts, circumstances or occurrences noted on the Proposal for the current Period of Insurance or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b) facts, circumstances or occurrences of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew (or ought reasonably to have realised) may give rise to a Claim; or
- c) Claim first made against the Insured prior to the start of the Period of Insurance.

3.7 Related Parties

any:

- a) other person or entity who is an Insured or is otherwise covered by this Policy; or
- b) Subsidiary of an Insured; or
- c) entity of which an Insured has or had held at least a 20% financial interest and/or has held or has board representation for that entity.

3.8 Trading Debts, Cost Estimates and Refund of Fees

any:

- a) trading debt incurred by the Insured or any guarantee given by the Insured for any debt; or
- b) any liability to refund professional fees or charges; or
- c) provision of cost guarantees, cost estimates, estimates of projected savings or profits.

3.9 Patent Exclusion:

Notwithstanding Part 1 Insuring Clause, Automatic Extensions for Part 1 Clause 2.10 Intellectual Property Cover and Part 2, this insurance does not apply to, and the Insurer will not indemnify the Insured for any actual or alleged liability directly or indirectly arising from, caused by, attributed to, or in any way related to any Claim directly or indirectly arising from or in connection with infringement or violation of a patent.

4. Definitions to Part 1

In addition to the General Definitions, the following definitions apply to Part 1 of the Policy:

4.1 Computer Equipment

any combination or part of computer data, computer hardware, computer operating system, computer application, computer software or computer chip including microprocessor chips or embedded control logic.

4.2 Documents

Documents and data of any type including Electronic Data, magnetic tapes, written or printed documents of any type including deeds, wills, agreements, maps, plans, books, letters, certificates and forms. Documents does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

4.3 Inquiry Representation Expenses

necessary and reasonable legal costs and expenses incurred by the Insured with the Insurer's consent arising out of any notice requiring the Insured's attendance at an inquiry or proceeding before an official body or professional board in relation to a breach or alleged breach of a professional code of conduct administered by a professional association that is responsible for professional conduct or standards in relation to Information Technology Services.

4.4 Insolvent

becoming a body corporate:

- a) that is unable to pay its debts as and when they fall due; or
- b) in respect of which an application for winding up has been made; or
- c) in respect of which a liquidator, provisional liquidator, receiver, receiver and manager, or official manager has been appointed (whether or not by a Court); or
- d) in respect of which an administrator has been appointed or that is under administration; or
- e) that has executed a Deed of Company Arrangement that has not yet terminated; or

- f) that has entered into a compromise or arrangement with another person.

4.5 Joint Venture

an unincorporated enterprise that the Insured carries on jointly with some other party or parties.

4.6 Retroactive Date

The date shown in the Schedule against 'Retroactive Date'.

4.7 Senior Counsel

a barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia or the Dominion of New Zealand.

5. Claims Conditions to Part 1

5.1 Conduct of Defence

The Insurer will be entitled at any time to take over and conduct the investigation, defence and/or settlement of any Claim in the name of the Insured.

Any amounts incurred by the Insurer or the Insured with the written consent of the Insurer in the conduct of the defence of a Claim will be part of Defence Costs.

If the conduct of the defence of a Claim is assumed by the Insurer, or the Insured is permitted by the Insurer to incur costs and expenses in the defence of the Claim, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not indicate an Insured is entitled to indemnity under the Policy or waive or prejudice the Insurer's rights under the Policy.

5.2 Representation Issues

The lawyers instructed by the Insurer to act on the Insured's behalf can disclose to the Insurer

any information they receive in that capacity. By claiming under this Policy the Insured authorises these lawyers to disclose this information to the Insurer and waives any claims for legal professional or client privilege against the Insurer.

If there is a dispute between the Insured and the Insurer, the lawyers appointed by the Insurer to conduct the defence of the Claim will also continue to advise the Insurer on all issues, including but not limited to the right of the Insured to indemnity under the Policy. It is agreed that this will not prevent those lawyers from acting on the defence of the Claim on the instructions of the Insurer.

If any actual or potential conflict arises between the interests of the Insured and the Insurer, the lawyers appointed by the Insurer to investigate and defend the Claim may stop acting on behalf of the Insured and continue to advise the Insurer in any dispute about the entitlement of the Insured to indemnity under the Policy.

The Insured agrees that all communications between the Insurer and the lawyers appointed by the Insurer to investigate, defend or settle a Claim are privileged as between the Insurer and the lawyers. The Insured is not entitled to demand, access or obtain these communications or information about their contents.

5.3 Disputes as to Defence and Settlement of Claims

If a dispute arises between the Insurer and Insured as to whether or not to contest any legal proceedings, the Insurer and the Insured will not be required to contest these legal proceedings unless a Senior Counsel advises that these proceedings should be contested. The Senior Counsel appointed to advise will be agreed upon by the Insurer and the Insured but if they cannot agree, will be appointed by the President of the Law Society or equivalent body in the State where the Claim is being heard or defended. Senior Counsel will advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the Insured and the likely Defence Costs that will be incurred in defending the Claim. The costs of Senior Counsel giving this advice will be part of Defence Costs.

6. General Conditions to Part 1

6.1 Excess

The Insurer's liability under this Policy will apply only to that part of the amount, up to the available Limit of Indemnity, required to dispose of a Claim, which exceeds the Excess. The Excess will be paid by the Insured and will be uninsured. The Excess is inclusive of Defence Costs.

The Excess applies to each Claim covered by this Policy. However, where more than one Claim arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one Excess is payable under the Policy.

Part 2: General Liability

1. Insuring Clauses for Part 2

1.1 The Cover

Where cover under this Part is indicated in the Schedule, the Insurer will indemnify the Insured against all sums which the Insured becomes legally liable to pay as compensation in respect of:

- a) Personal Injury; or
- b) Property Damage

first occurring during the Period of Insurance within the Territorial Limit as the result of an Occurrence in connection with the Insured's Business.

The cover under this Part is subject to the terms and conditions, limitations and exclusions of the Policy.

1.2 Limit of Liability

Except as provided in this Section under the heading 'Additional Costs', the Insurer's total liability under this Policy to indemnify the Insured:

- a) in respect of any one Occurrence will not exceed the Limit of Liability; and
- b) for all claims in respect of Products Liability during the Period of Insurance;

is limited in the aggregate to the Limit of Liability.

All Personal Injury and Property Damage consequent upon or attributable to one source or originating cause will be deemed one Occurrence.

Any entitlement to indemnity under this Policy for an Occurrence will be determined by reference to the date on which the Personal Injury or Property Damage from the one source or originating cause first occurred.

1.3 Claim Costs

In addition to the cover provided under Insuring Clause 1.1, The Cover, the Insurer will pay:

- a) costs and expenses incurred by the Insurer, or by the Insured with the Insurer's prior written consent, in the investigation, settlement or defence of any claim for compensation for which the Insured is entitled to indemnity under this Policy; and
- b) legal costs taxed or assessed against the Insured in any claim referred to in paragraph a) and all interest accruing from the entry of judgment against the Insured until the Insurer has paid, tendered or deposited in court such part of the judgment as does not exceed the Limit of Liability; and

- c) reasonable expenses the Insured has incurred at the Insurer's direction or request in assisting the Insurer in the investigation or defence of any claim but the Insurer will not pay for loss of earnings.

1.4 Additional Costs

Claims costs and expenses are part of and can be included in the Limit of Liability, however the Insurer will indemnify the Insured for these costs in addition to the Limit of Liability for up to:

- i. \$5,000,000; or
- ii. the Limit of Liability;

whichever is lesser

- a) in respect of any one Occurrence; and
- b) for all claims in respect of Products Liability during the Period of Insurance in the aggregate.

If a judgment or an amount required to settle a claim exceeds the Limit of Liability, the Insurer's liability to pay claims costs is limited to the proportion the Limit of Liability bears to the amount required to be paid to dispose of the claim and in all cases will not exceed an amount equivalent to the Additional Costs described in the paragraph above.

2. Automatic Extensions for Part 2

The Insurer agrees to extend the Insuring Clauses for Part 2 to cover these Automatic Extensions for no additional premium provided that:

- a) each Automatic Extension is subject to the Schedule, General Exclusions and Additional Exclusions for Part 2, General Conditions and Additional Conditions for Part 2, Excess and all other terms applicable to Part 2 of this Policy; and
- b) the inclusion of any Additional Extension does not increase the Limit of Indemnity for Part 2.

2.1 New Subsidiaries

The cover provided by this Policy will extend to any subsidiary company incorporated within the Territorial Limit that is incorporated or acquired by the Insured during the Period of Insurance and relating to the Insured's Business but only in respect of liability for Personal Injury or Property Damage occurring in the period commencing on the date of incorporation or acquisition by the Insured and ending:

- a) 14 days from the date of incorporation or acquisition by the Insured; or

- b) if the Insured has
 - i. notified the Insurer in writing of the incorporation or acquisition within 60 days; and
 - ii. provided all information that the Insurer requires and the Insured has agreed to any additional terms and conditions and Premium that the Insurer may require;

on such date as the Insurer may in the Insurer's absolute discretion determine, but in any event no cover is provided by this subsection beyond the end of the Period of Insurance.

2.2 Principals

The Insurer will insure the Insured for liability to indemnify any principal with whom the Insured has entered into a contract or agreement for the performance of work relating to the Insured's Business if the terms of the contract or agreement require that the Insured must indemnify the principal but only:

- a) in relation to work carried out by the Insured; and
- b) if the liability would have been implied by law in the absence of the contract or agreement; and
- c) in respect of claims for which the Insured would be entitled to indemnity under this Policy if the claim was made against the Insured.

3. Exclusions for Part 2

In addition to the General Exclusions, the Insurer will not indemnify the Insured for any actual or alleged liability directly or indirectly arising from, caused by, attributed to, or in any way related to:

3.1 Computers and Technology

- a) the design of any computer hardware or software; or
- b) any Computer Virus.

3.2 Defamation

the publication of a libel, utterance of a slander or defamation:

- a) first made prior to the Period of Insurance; or
- b) made by the Insured or with the Insured's authority, with knowledge of its falsity or defamatory character; or
- c) in any way related to advertising, broadcasting, publishing or telecasting activities conducted by the Insured or on the Insured's behalf, including but not limited to the publication of material on the Internet.

3.3 Loss of Use

the loss of use of tangible property (not physically lost, destroyed or damaged) caused by or arising directly or indirectly out of:

- a) delay or lack of performance by the Insured or on the Insured's behalf under any contract or agreement; or
- b) the failure of the Insured's Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, except for loss of use of other tangible property resulting from the sudden and accidental physical loss, destruction or damage to the Insured's Product after the Insured's Product has been put to use by any person or organisation other than the Insured.

3.4 Product Defect, Product Recall and Faulty Work

- a) Property Damage to the Insured's Product caused by or arising directly or indirectly out of them or any part of them; or
- b) any warranty or guarantee in relation to the Insured's Product given by the Insured or on the Insured's behalf, except to the extent that any such warranty or guarantee is implied by any legislation in relation to the safety of products; or
- c) the withdrawal, inspection, removal, reinstallation, repair, replacement or loss of use of the Insured's Product, or of any property of which the Insured's Product forms a part; or
- d) the cost of repairing, correcting, performing or improving any work or service undertaken or provided by the Insured or on the Insured's behalf.

3.5 Professional Liability

the rendering of or failure to render professional advice or service by the Insured or on the Insured's behalf or an error or omission in connection therewith but this exclusion does not apply to the rendering or failure to render medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

3.6 Property in the Insured's Physical or Legal Control

Property Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's physical or legal care, custody or control, other than:

- a) buildings and their contents at the Insured's premises, which are leased or rented to the Insured for the Insured's Business; or
- b) Employees' and visitors' clothing and personal effects; or

- c) Vehicles (not owned or used by the Insured or on the Insured's behalf or liability for Vehicles not otherwise excluded by this policy) whilst in a car park owned or operated by the Insured other than for reward; or
- d) other property not owned by the Insured, not leased to the Insured or not rented to the Insured but temporarily and legally occupied by the Insured or in the Insured's possession or control however, the Insurer will not indemnify the Insured for damage:
 - i. to that part of such property on which the Insured are working or have been working and which arises out of that work; or
 - ii. to any form or type of living animal or creature.

The Limit of Liability in respect of coverage provided under paragraph d) of this Exclusion is \$500,000 for any one occurrence and for all claims during the Period of Insurance in the aggregate inclusive of all costs, expenses and interest as set out in Insuring Clauses to Part 2, Insuring Clause 1.3, Claims Costs this Policy.

3.7 Vehicles

caused by or arising directly or indirectly out of or in connection with the ownership, possession, maintenance, use or control of any Vehicle:

- a) which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:
 - i. the loading or unloading of any Vehicle or the delivery or collection of goods to or from any Vehicle, where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare declared as a designated road; or
 - ii. the use of any mechanical tool or plant attached to or forming part of any Vehicle, whilst the Vehicle is being used at the Insured's premises or another work site for the purpose of the Insured's Business but not whilst the Vehicle is in transit or is being used for transport or haulage; or
- b) where such liability is insured or required to be insured by any legislation or competent authority.

4. Definitions to Part 2

The intended meaning of some of the important words used in Part 2 this Policy are shown below:

4.1 Computer Virus

an unauthorised application, intrusive codes, programming or computer code segment that is usually self-replicating, requires a host program or executable disk segment in which it can be

contained, and which destroys or alters an information technology system, host program, other computer code or data causing undesired program or computer system operations including damage, disruption or the collection of confidential data.

4.2 Occurrence

any event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended by the Insured.

4.3 Product

anything or things (including any packaging, containers, directions, markings, instructions, warnings or specifications) manufactured or deemed manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by the Insured or on the Insured's behalf in the course of the Insured's Business after physical possession has been passed to others.

4.4 Products Liability

liability for Personal Injury or Property Damage arising out of the Insured's Product but only if the Personal Injury or Property Damage occurs away from the Insured's premises or premises leased or rented to the Insured and after physical possession of the Insured's Product has been passed to others.

4.5 Property Damage

- a) physical loss, destruction or damage to tangible property, including loss of use of that property at any time resulting therefrom; or
- b) loss of use of tangible property not physically lost, destroyed or damaged where such loss of use results from physical loss, destruction or damage to other tangible property.

5. Conditions to Part 2

As a precondition to the Insured's entitlement to indemnity under this Policy, the Insured must comply with these conditions. If the Insured does not comply, the Insurer reserves its rights to refuse to pay a claim or to reduce (in some cases to nil) the amount the Insured would otherwise be entitled to receive.

5.1 Maintenance of the Insured's Records

The Insured must keep and maintain, for at least 10 years after the date Product upon which they are brought into existence or come into the Insured's possession or control, documents and records:

- a) relating to research and development, specification, design and manufacturing of the Insured's Product; and

- b) showing the source and quality of components of the Insured's Product; and
- c) identifying persons and entities comprising the distribution chain for the Insured's Product; and
- d) comprising sales records, including batch number and destination of the Insured's Product; and
- e) detailing quality control, inspection, testing, repairs, replacements and recalls of the Insured's Product.

5.2 Cross Liability

Where the Insured comprises more than one party, each Insured is considered as a separate legal entity and the expressions Insured and Insureds apply to each party as if a separate policy had been issued to each of the parties but the Insurer's aggregate liability is limited to the Limit of Liability.



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